BRIEF NOTE: ON ARENDAMENTO, AFORAMENTO AND CONFERMENT TITLE OF EMPHYTEUSIS OVER COMMUNITY LAND BELONGING TO COMUNIDADES OF GOA.

1. The Code of Comunidades, 1961, the existing customary law in force, since prior 20.12.1961, self-contained personal law of Village Communities/ Comunidades of Goa, dealing with management and financial administration of affairs, for protection of Community land, vested with given village Community/ Comunidade of Goa.

2. The said Comunidades are in existence since times immemorial, established by indigenous people, named Gaunkars, who establish autonomous private villages with human habitation since ancient times, who first to erect village temple having installed respective village deity.

3. The said Code, besides others, including State made laws, since prior 20.12.1961 in State of Goa, pertaining to things and matters covered by them, not being under State landlordism, saved by Section 5 of Goa, Daman and Diu (Administration) Act, 1962, law made by Parliament, from being repealed and amended to adapt in conformity with Constitution of India.

a) The said existing laws are enforceable in existing Sub Fiscal Administration Districts of Goa, where State is not absolute owner nor proprietor of land with scope to make State grant for any purpose or claim any land revenue therefrom and develop over all State landlordism.

b) The said existing laws in force, enforceable within the limits of existing Sub Fiscal districts of Goa, overall headed by Director of Civil Administration, foreseen by Fiscal Statute, namely Diploma Legislative No.1785 dated 07.04 1958, in force.

c) The existence of this Fiscal Statute, observed by Judgment of Supreme Court of India, reported by AIR 1967 SC 1110, and has held this law is not pertaining to the property defined and expressed by Article 31A of the Constitution of India, upon finding that existing laws in Goa, Daman and Diu since prior 20.12.1961, not dealing with property covered by State land tenure contract/agreement with liability pay land revenue payable to the Government.

d) The said existing laws are in Portuguese language, of which authenticated translation in English in terms of Article 348 (3) of the Constitution of India. That pending such authenticated translation the Goa State Legislative Assembly and the Courts are forced to performed translation made available presumed to be correct and when dishonest to the original text.

4. The things covered by the said Code and the existing laws in Goa, not in conformity with Constitution, not covered by the Items under the Lists of Seventh Schedule to Constitution of India. The Central and State made laws in conformity with Constitution of India are enforceable in duly constituted and established Revenue Administration District of the Central Government and over all headed by designated Collector foreseen by the General Clauses Act, 1897 and not enforceable within limits of Sub Fiscal Administration Districts of Goa, over all headed by Director of Civil Administration.

a) The State Government nor Goa State Legislative Assembly vesting with Constitutional competency pass Orders or to legislate in the matter covered by Code of Comunidades, notwithstanding absence of authenticated translation in English. All and every such Order passed by Government and or enactment carried by Goa State Legislature contrary to the law, absolute nullity, when no such Competence vests with the Parliament.

5. The said Code, contains set of time tested innovation introduced from time to time, compiled as rules and regulation, improvement over Code of 1904 and 1933. This compilation carried out after holding customary convention in the year 1960. It is promulgated in terms of Diploma Legislative No.2070 dated 15.4.1961, as notified and published in Government Official Gazette dated 15.04.1961. This Diploma stands saved by Section 5 of the above said Act, 1962, from being repealed or amended.

a) This Diploma at its part III, solemnly declared abolition of payment of land Revenue to the Government, by Comunidades, since historical truth said to be revealed, finding that there is absence of element of State grant of any land to village Communities/ Comunidades of Goa at any

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point In time, are absolute owners, and that Government Is not entitled to claim any land revenue from Comunidades.

(i) The Article 5 of said Code, provides that grant of all kind of rights over the Community land ought to be strictly as provided for in terms of the provisions of said Code.

(ii) The Unique clause to said Article 5, provided that from the year 1962, the Comunidades not to pay land revenue to the State exchequer.

b) It is further clarified, that the grant of land made by given Comunidade under the contract termed Aforamento, not the kind of grant of land made by State/Government to be covered by Doctrine of **Dominium Direct and Dominium Until.**

(i) Article 7 of the said Code, maintains that Comunidades not proprietors, enjoying assets by Title of Emphyteusis foreseen in terms of provisions of Portuguese Civil Code, 1867.

c) It further provides that the alienation of Community property of the given Comunidade stands prohibited.

(i) Article 12 of the said Code, prohibits Court attachment of immovable properties of the given Comunidade.

d) It further provides against alienation of Community property of the given Comunidade, where grant would be subject to law of Mortmain.

(i) Article 647 of the said Code, provides against alienation of Community property by given Comunidade where grant would be subject to law of Mortmain.

e) It further provides for reconstitution of extinct Comunidades by the Government for the reasons stated thereunder.

(i) Article 648 of the said Code, provides powers to the Government to commence the reconstitution of extinct Comunidades wherever possible by restoration of their Community land.

6. The community land and immovable property thereon, belonging to given Village Community/Comunidade of Goa, whosoever in possession and in occupation and in whatsoever manner, covered by the

respective villages listed by Schedule No.1 annexed to said Code, read in terms of Article 2 of Code of Comunidades.

a) These are absolute private autonomous villages in State of Goa, entirely covered by inalienable Community land, pertaining to respective village Community/Comunidade, and since times immemorial, with ancient times settled indigenous population.

b) The above stated fact stands confirmed by Government Notification No.26/DP/Guidelined/2016/4229 dted 14.06.2016 notified and published Official Gazette dated 21.07.2016.

7. The Government in terms of Article 5 of the said Code, under testamentary contractual statutory obligation to provide at all time the assured and guaranteed State Administrative Tutelage/ Guardianship, both, of preventive and corrective in nature, to prevent any kind of prejudice caused to Community land, by any source and including by the General body or by managing Committee of the given Comunidade itself, besides by the adverse/hostile acts or omission on part of authorities appointed under said Code of Comunidades.

8. The State Governor in terms of Article 153 of the Code of Comunidades, is designated Ultimate statutory arbitrator, with powers to settle all kind of disputes covered by said Code of Comunidades, since State is testamentary statutory guardian of said Community land, as expressed under Article 5 of the said Code of Comunidades.

9. The community land and property thereon, including reserved in terms of Article 325, belonging to given Comunidade, since free from any kind of encumbrances, covered by Article 208 to 225 of the said Code, stands identified by Lote numbers, by Tombo Livro/ Register No.1.

a) The Community land with property thereon, pertaining to given Comunidade, since covered by encumbrances lawfully created thereof, covered by Article 226 to 229 of the said Code, stands identified by Lote numbers, by Tombo Livro/Register No.2.

10. The said Code of Comunidades, provides scope to respective Comunidade to generate annual recurring income required for its administration and maintenance, by letting out rights over earmarked income earning developed properties, foreseen by Tombo Livro/Register

No.1, by public auction to the members of the public and the one who is selected as highest bidder, who provides standing guarantee as fit surety, to the satisfaction of Managing Committee of the given Comunidade.

a) The accepted bidder needs to execute tri-party standard agreement, termed "Arrendamento", normally of 3 (three) years and not exceeding 9 years, if for coconut bundh. The given auctioned item is placed unto custody of the said accepted bidder, who is subject to breach of agreement for any damage caused to the item and liable to be evicted on default to remit the agreed amount from time to time.

11. The said Code also provides scope to assign rights over the community land by execution of contract termed "Aforamento" with single physical living individual, who offers to carry the work or job of bring under cultivation the uncultivated piece or parcel of Community land for the stipulated period exceeding 20 years and or for unspecified period, to be determined by the operation of law, and upon such determination developed agricultural property, automatically after end of this contract period, vests with given Comunidade. This is the developed property, which the given Comunidade, is free to generate to itself recurring annual income by letting out under the agreement of "Arrendamento".

a) This contract of Aforamento, for the agricultural purpose executed based on condition imposed by extra Ordinary General Body meeting of the given Comunidade, besides for the payment of annual stipulated "Foro" as consideration thereof, upon having approved by the designated Governor foreseen by Article 153 read with Article 31 of the Code of Comunidades, before providing provisional possession of the assigned land.

b) The said Code also provides scope to assign rights over the community land by execution of contract termed "Aforamento" with single physical living individual, in need to erect his or her family single dwelling/residential house, over uncultivated piece or parcel of Community land, not found fit to be develop for agricultural purpose, for unspecified period beyond 20 years. This contract is subject to breach of contract and liable to be determined at any time by the operation of law.

c) The general Civil law, governing contract of Aforamento, provides scope to the assignee/grantee, who fulfilled the minimum condition of said contract and where assigned land is not liable to be reverted, to seek final possession of assigned land from the assignor for conferment of Title of Emphyteusis and thereof to make application for redemption of the payment of annual Foro, by payment of its 20 annuities.

d) The assignee of community land is also eligible/ qualified to make such application to given Comunidade, and requesting to redeem the annual payment "Foro", by remitting its payment under 20 annuities, to be conferred with Title of Emphyteusis.

e) This redemption does not constitute the purchase of the assigned land nor determined the contract of Aforamento in force. This a concession granted to the assignee, for remission of Foro by payment of twenty (20) annuities, not to default annual payment of "Foro", since if defaulted for continuous period of 3 years in payment of stipulated amount of annual Foro, it would terminate the contract of Aforamento and assignee would be liable to evicted from the assigned land.

f) The kind of Title of Emphyteusis conferred by the State over the land belonging to the State covered by Article 2189 of Portugues Civil Code, 1867 and subject to following provisions there under of the said Portuguese Civil Code, 1867. In terms of Article 1 of the Code of Comunidades, since the concept of said contract of Aforamento is adopted by Comunidade, what is provided to it in terms of the said Portuguese would apply.

g) The respective Comunidade in terms of Article 8 read with Article 30-4 (e) of the said Code, vest with powers of eminent domain to expropriate the land in its public interest, consequently eliminate the title of emphyteusis granted by it, after having received approval from the designated Governor in terms of Article 31 of the said Code.

h) That only extra Ordinary General Body of the given Comunidade, vesting with pre-emption, by convening extra ordinary general meeting, has powers in terms of Article 30-4 (f) of the said Code, to permit transfer of the land holding covered by the title of emphyteusis to another, permit

the exchange as well as the sale of property covered thereof, subject to approval by designated Governor in terms of Article 31 of the said Code.

i) **That any kind of transfer made, by any manner or mode, by person vesting with land and property thereon by the title of Emphyteusis conferred by concerned Comunidade, notwithstanding redemption of annual recurring payment of Foro, by payment of 20 annuities, without the consent of the General Body of the given Comunidade and without prior approval in terms of Article 31 of the said Code from the designated Governor, such transfer a absolute nullity. The Managing Committee of given Comunidade does not vest with powers to permit such transfer.**

j) All the land holdings and property thereon, covered by the absolute private villages of given Comunidades of Goa stands covered by Cadastral Survey in terms of Legislative Diploma No.764 dated 26/11/1934 for taxation purposes.

12. The Article 1 of the Code of Comunidades provides for adoption of the general law, where the said Code is silent. In this case the provisions of the said Code are silent when dealing with its community land covered by rights assigned/ granted by execution of contract of Aforamento and on conferment of title of Emphyteusis thereto, by adopting as provided in terms of Portuguese Civil Code, 1867. The following therefore, needs to be observed:

a) The assignee who fulfilled the minimum conditions of the assigned is entitled to seek redemption of annual payment of Foro/ Quit Rent, and make it freehold property, under concept of permanent possession during the life time of assignee and successors by operation of law, after conferment of Emphyteusis title, covered by Article 2189 of the Portuguese Civil Code.

b) In this case the Assignor/ grantor who originally vesting with absolute ownership over given land free from encumbrances, remains bare mere **Dominium Direct** without possession of it and since the assignee/grantee is in custody/ possession of it, under concept of **Dominium Util** for stipulated contracted period and for the period where not stipulated, ordinarily for three (3) lifes and at the end of which that

said contract is determine by operation of law and the possession devolves and consolidates unto Dominium Direct always vesting with the Assignor/ grantor.

c) The Wharton's Law Lexicon provides definition and expression to term **Emphyteusis** and to term **Dominium Direct** and **Dominium Utile** and while detailed explanation is provided by **The Institutes of Justinian by Thomas Collett Sandars, M.A.**

d) The Assignor vests with right of **consolidation**, that is, regaining Dominium utile,(possession) thereby extinguishing the emphyteusis. The Assignor can use this right in two cases a) either in the absence of successor of the assignee (emphyteuta); or b) by default of the assignee, who failed to comply with the conditions annexed to the contract, which is called penalty of forfeiture. This forfeiture takes place when assignee defaults—1) when the Foro (quit rent) is not paid for three consecutive years; 2) Where there is deceit by Assignee and or destroys the property and the assigned plot of land; 3) When Assignee sells/ alienated the assigned plot of land, without informing the assignor, in cases in which the Assignor had the right of preemption; 4) By any other transgressions.

13. The said contract by term "Aforamento" does not constitute nor meant by Lease agreement as observed by the judgment of the DB of High Court of Bombay at Goa passed on 01.09.1987 in Writ Petition No. 215/86.

14. The said Contract of Aforamento and thereof conferment the Title of Emphyteusis, by redeeming the payment of annual recurring Foro by assignee, not bring into existence kind of property with element of estate, defined and expressed by Article 31A of the Constitution of India.

15. The then Goa, Daman and Diu Legislative Assembly enacted the Goa, Daman and Diu Land Revenue Code, 1968 and with relevant Rules made thereunder to be enforceable in the Districts of Daman and Diu, after State acquiring proprietorship to land in terms of Daman (Abolition of Proprietorship to Villages) Regulation 1962 and in terms of Goa, Daman and Diu Land Revenue(Abolition of Proprietorship to Land In Diu) Act, 1971 and where there is bringing into existence private property kind defined and expressed by Article 31A of Constitution consequence to

State grant of land under Occupancy Rights with liability to pay land revenue to the Government.

a) This Code came to be promulgated on 01.03.1971 to be enforced in the Union Territory of Goa, Daman and Diu, notwithstanding the absence of State proprietorship in the district of Goa and thereof absence of private property kind defined and expressed by Article 31A of the Constitution in the State of Goa.

b) The State Government, at the cost of public funding, caused its Survey and Revenue Authorities foreseen by the said Code, In absence of duly constituted Revenue Administration District foreseen by Section 6 of the said Code, 1968 and in absence of State grant in terms of Section 21 of the said Code, 1968, to universally frame and maintain so called Revenue Survey plans/ maps, as to cover all kind of land holdings in the territory of Goa and also caused to frame and maintained so called Record of Rights, without anyone assessment by the provisions under Chapter VI and or under Chapter VII of the said Code, 1968, to pay land revenue to the Government in terms of Section 45 of the said Code, 1968. All this exercise is absolute nullity in law, when read with Article 261 (2) of Constitution.

c) The provision of Section 21 of the Goa, Daman and Diu Land Revenue Code, 1968 when read with Goa, Daman and Diu Land Revenue (Disposal of the Government lands) Rules, 1971, for grant of land, is for allotment of land to special class of people specified by said Rules, 1971 and none others are eligible for this grant. The similar provisions are found under the Karnataka Land Revenue Act, 1964 by its Karnataka Land Grant Rules, 1969. The Judgment of the Supreme Court of India reported by [2000(2)) LAC 31 (SC)] ruled that the said Rules required to be followed.

d) The Judgment of the Supreme Court of India reported by AIR 1976 SC 1485 ruled that " But the presumption of correctness can apply only to genuine, not forged or fraudulent entries. The distinction may be fine but it is real. The distinction Is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously.

Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title".

16. The kind of land holdings and property foreseen under the Goa Land Revenue Code, 1968, do not exist in the villages belonging to Comunidades nor exist with allottee or assignee/ grantee over community land of given Comunidade. The kind of property foreseen by Transfer of Property Act or by Central and State made laws in conformity with Constitution of India.

a) The execution of Deed of Sale or Lease agreement, Gift, etc., and registration of the same in terms of Indian Registration Act, when taking place by making use of information provided by forged Record of Rights, covering land holdings in the said Villages, amount to act of fraud as such absolute nullity in law.

b) The NOC/permission obtained from various Departments and authorities and including the local bodies, even from concerned authorities of given Comunidade, by making use of forged document, to carrying any kind of development over the Communlty amounting to fraud by existing fraud.

17. The one who is claiming to be lawfully conferred with Occupancy Rights or vesting with Occupancy Rights, for reasons of his or her name found entered in Occupant's Column of Record of Rights/ Form I and XIV must produce proof of State grant made in terms of Section 21 of the said Code, 1968, the execution of agreement in Form III with declaration against transfer of Occupancy Rights without prior permission of Collector and besides should produce copy of Occupancy Certificate issued in Form XVIII read with Rule 17 or 19 and 46 of the above referred Rules, 1971. It cannot be said one is ignorant of law when claims ownership title/right over land and property based on information provided by forged Record of Rights/ Form I and XIV.

This note, is prepared at the instance of interested gaunkars of Comunidades, seeking to prevent commission of fraud to the gross prejudice of given village Communitty/ Comunidade of Goa.

Dated: 24/05/2026 Adv. Andre Antonio Pereira